

An organization does not qualify for exemption from Federal income taxation under section 501(c)(3) of the Internal Revenue Code of 1954, as an educational organization, where its primary activity is to furnish, on a rental basis, a chapter house to a fraternity which is composed of students.

A corporation, fund, or foundation so organized may, however, under proper circumstances, be classified as a club organized and operated exclusively for pleasure, recreation and other nonprofitable purposes and exempt from Federal income tax under the provisions of section 501(c)(7) of the Code.

Advice has been requested whether a corporation, fund, or foundation is, under the circumstances described below, entitled to exemption from Federal income tax.

In the instant case, the alumni members of a college fraternity formed a corporation for the purpose of furnishing financial aid and assistance in the education of students affiliated with the fraternity at a local university. Membership is open to all alumni members of the local chapter and to other alumni members of the fraternity interested in the promotion of a high scholastic standard among the members and pledgees attending the university. Its primary activity, however, is concerned with the operation and maintenance of a chapter house adjacent to the university which is leased to the members of the local chapter. Receipts are derived from donations, loans, and rental payments. Its principal expenditures are incurred in improving and maintaining the chapter house.

Section 501(c)(3) of the Internal Revenue Code of 1954 describes certain organizations exempt from tax under section 501(a) and provides, in part, as follows:

'Corporations, and any community chest, fund or foundation, organized and operated exclusively for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.'

In order to qualify for exemption under the above-cited provision of law, an organization must be both organized and operated exclusively for one or more of the purposes specified therein. An organization may be formed for the purpose of promoting the education of the members of a local chapter of a fraternity or sorority, but, in order to qualify for exemption

under section 501(c)(3) of the Code, the purposes and activities must be educational within the contemplation of the statute and must be without any substantial noneducational purpose or activity. Thus, a trust fund to provide scholarships for the members of a particular fraternity may be exempt under section 501(c)(3) of the Code. See Rev. Rul. 56-403, C.B. 1956-2, 307.

But where the predominant activity is the acquisition, improvement or maintenance of a chapter house, incidental activities concerned with the cultural development of students are not sufficient to bring the trust within the classification of an educational organization described in section 501(c)(3) of the Code. While it is true that the organization in the instant case is associated with education in that it encourages and promotes higher scholastic standards among the members of the fraternity, encourages extracurricular activities, and is instrumental in furnishing them with housing facilities, its actual operations conclusively illustrate that it is not organized and operated exclusively for educational purposes within the intendment of section 501(c)(3) of the Code.

It has long been the position of the Internal Revenue Service that college fraternities and sororities are not exempt educational organizations, G.C.M. 5952, C.B. VIII-1, 172 (1929). *Alfred T. Davison v. Commissioner*, 60 Fed. (2d) 50 (1932). Hence, assisting such an organization to acquire and maintain a chapter house is likewise not an exclusively educational activity. In *R. L. Phinney v. J. Chrys Dougherty et ux.*, 307 Fed. (2d) 357 (1962), the Court, in considering a somewhat similar situation, held that the Fund, there considered, was not a corporation organized and operated exclusively for educational purposes within the meaning of section 170(c)(2) of the Code. The same principles are involved in this case for the purpose of determining whether the instant organization qualifies for exemption under section 501(c)(3) of the Code.

In view of the foregoing, it is held that a corporation, fund, or foundation, organized for the purpose of aiding and assisting in the education of students affiliated with a fraternity at a college or university, whose primary activity is the operation and maintenance of a chapter house, on a rental basis, for the use and benefit of the members of a local chapter of the fraternity, does not qualify for exemption as an educational organization within the meaning of section 501(c)(3) of the Code.

A corporation, fund, or foundation so organized may, however, under proper circumstances, be classified as a club organized and operated exclusively for pleasure, recreational and other nonprofitable purposes and exempt from Federal income tax under section 501(c)(7) of the Code.